

Judicial review of agency action is limited to the administrative record. United States v. Massey, 380 F.3d 437, 440 (8th Cir. 2004). “[T]he court in conducting the plenary review mandated by [Citizens to Preserve] Overton Park [,Inc., v. Volpe, 401 U.S. 402, 420 (1971)] should limit its inquiry to the administrative record already in existence, supplemented if necessary by

affidavits, depositions, or other proof of an explanatory nature.” Independent Meat Packers Ass’n. v. Butz, 526 F.2d 228, 239 (8th Cir. 1975). While explanatory statements are allowed, no new rationalization may be added. Sierra Club v. Army Corps of Engineers, 771 F.2d 409, 413 (8th Cir. 1985).

The court is aware of the limited scope of judicial review of agency decision. Because petitioner is asking both that the declarations be stricken and be kept, the court finds that at the time of considering the party’s briefs, the court will consider only those parts of the declarations appropriate for judicial review.

Accordingly,

IT IS HEREBY ORDERED that petitioner’s Motion to Strike is **DENIED** as more fully set out herein. [Doc. 16]

/s/Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this 19th day of July, 2006.